

ADMINISTRATIVE POLICY



STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

TITLE: MEAL AND REST PERIODS

NUMBER: ES.C.6

**CHAPTER: RCW 49.12
WAC 296-126-092**

REPLACES: ES-026

ISSUED: 1/2/2002

ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

Meal and rest periods are conditions of labor that may be regulated by the department under RCW 49.12, the Industrial Welfare Act. The department has the specific authority to make rules governing conditions of labor, and all employees subject to the Industrial Welfare Act are entitled to the protections of the rules on meal and rest breaks. The actual meal and rest break requirements are not in the statute but appear in WAC 296-126-092, Standards of Labor.

Note: **Minor employees** (under 18) and **agricultural workers** are not covered by these rules. The regulations for minors are found in WAC 296-125-0285 and -0287. The regulations for agricultural employees are found in WAC 296-131-020.

When is a meal period required?

Meal period requirements are triggered by more than five hours of work:

- Employees working five consecutive hours or less need not be allowed a meal period. Employees working over five hours shall be allowed a meal period. See WAC 296-126-092(1).
- The 30-minute meal period must be provided between the second and fifth working hour.

- The provision in WAC 296-126-092(4) that no employee shall be required to work more than five consecutive hours without a meal period applies to the employee's normal workday. For example, an employee who normally works a 12-hour shift shall be allowed to take a 30-minute meal period no later than at the end of each five hours worked.
- Employees working at least three hours longer than a normal workday shall be allowed a meal period before or during the overtime portion of the shift. A "normal work day" is the shift the employee is regularly scheduled to work. If the employee's scheduled shift is changed by working a double shift, or working extra hours, the additional meal period may be required. Employees working a regular 12-hour shift who work 3 hours or more after the regular shift will be entitled to a meal period and possibly to additional meal periods depending upon the number of hours to be worked. See WAC 296-126-092(3).
- The second 30-minute meal period must be given within five hours from the end of the first meal period and for each five hours worked thereafter.

When may meal periods be unpaid?

Meal periods are not considered hours of work and may always be unpaid as long as employees are completely relieved from duty and receive 30 minutes of uninterrupted mealtime.

It is not necessary that an employee be permitted to leave the premises if he/she is otherwise *completely* free from duties during the meal period. In such a case, payment of the meal period is not required, however, employees must be completely relieved from duty and free to spend their meal period on the premises as they please. These situations must be evaluated on a case-by-case basis to determine if the employee is on the premises in the interest of the employer. If so, the employee is "on duty" during the meal period and must be paid.

Employees who remain on the premises during their meal period on their own initiative and are completely free from duty are not required to be paid when they keep their pager, cell phone, or radio on *if* they are under no obligation to respond to the pager or cell phone or to return to work. The circumstances in determining when employees carrying cell phones, pagers, radios, etc., are subject to payment of wages must be evaluated on a case-by-case basis.

When must the meal period be paid?

Meal periods are considered hours of work when the employer requires employees to remain on duty on the premises or at a prescribed work site *and* requires the employee to act in the interest of the employer.

When employees are required to remain on duty on the premises or at a prescribed work site and act in the interest of the employer, the employer must make every effort to provide employees with an uninterrupted meal period. If the meal period should be interrupted due to the employee's performing a task, upon completion of the task, the meal period will be continued until the employee has received 30 minutes total of mealtime. Time spent performing the task is not considered part of the meal period. The entire meal period must be paid without regard to the number of interruptions.

Can an employee waive the meal period?

Employees may choose to waive the meal period requirements. The regulation states employees "shall be allowed," and "no employee shall be required to work more than five hours without a meal period." The department interprets this to mean that an employer may not require more than five consecutive hours of work and must allow a 30-minute meal period when employees work five hours or longer.

If an employee wishes to waive that meal period, the employer may agree to it. The employee may at any time request the meal period. While it is not required, the department recommends obtaining a written request from the employee(s) who chooses to waive the meal period.

If, at some later date, the employee(s) wishes to receive a meal period, any agreement would no longer be in effect. Employees must still receive a rest period of at least ten minutes for each four hours of work.

An employer can refuse to allow the employee to waive the meal period and require that an employee take a meal period.

What is the rest period requirement?

Employees shall be allowed a rest period of not less than ten minutes, on the employer's time, for each four hours of working time. Employees may not waive their right to a rest period.

Rest periods must be paid. The term "rest period" is a relief from duty. Rest periods are considered hours worked. Nothing in this regulation prohibits an employer from requiring employees to remain on the premises during their rest periods. The term "on the employer's time" is considered to mean that the employer is responsible for paying the employee for the time spent on a rest period.

Scheduling of rest periods. The rest period of time must be scheduled as near as possible to the midpoint of the four hours of working time. No employee may be required to work more than three consecutive hours without a rest period.

Intermittent Rest Periods. Employees need not be given a scheduled rest period when the nature of the work allows intermittent rest period equal to ten minutes during each four hours of work. "Intermittent" is defined as intervals of short duration in which employees are allowed to relax and rest, or a brief inactivity from work or exertion. Generally, if the nature of the work on a production line, for example, does not allow for intermittent rest periods, employees must be given scheduled ten-minute rest periods.

Variances from required meal and rest periods. Employers who need to change the meal and rest periods times from those provided in WAC 296-126-092 due to the nature of the work may, for good cause, apply for a variance from the department. The variance request must be submitted on a form provided by the department, and employers must give notice to the employees or their representatives so they may also submit their written views to the department. **See ES.C.9, Variances.**

A Collective Bargaining Agreement cannot provide for meal and rest periods that are less than those required by WAC 296-126-092. The department's interpretation of RCW 49.12 is that that statute and rules promulgated under it, including WAC 296-126-092, establish a minimum standard for working conditions for all employees in the state. Provisions of a collective bargaining agreement covering specific requirements for meal and rest periods must be least equal to or more favorable than the provisions of these standards.